

ORDINANCE NO. ____ - 2009

AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE DEFINITION OF "ACCESSORY USES OR ACCESSORY STRUCTURES"; DEFINING "ADJACENT" AND ELIMINATING "ADJACENT LANDOWNER" IN SECTION 101-1 OF THE MONROE COUNTY CODE; PERMITTING DOCKING FACILITIES ON ADJACENT LANDS UNDER CERTAIN CONDITIONS AND CREATING AN APPROVAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners makes the following Findings of Fact:

1. A need has been recognized to distinguish between adjacent and contiguous lands in the definitions of the Monroe County Land Development Regulations (LDRs).
2. At the direction of the Planning Commission, the Planning and Environmental Resources Department was directed to create an amendment to the LDRs, that would create a mechanism to further allow docks on adjacent lots.
3. Federal and State law grants power to Monroe County to regulate and restrict the use of land and buildings in order to promote the safety and general welfare of its citizens.
4. Monroe County has adopted land use goals, policies, and objectives in a comprehensive plan to guide policy on building and land use regulations, and to promote health, safety, and general welfare.
5. The provision of this ordinance is consistent with the Monroe County Comprehensive Plan and the Principles for Guiding Development in the Florida Keys Area of Critical State Concern.
6. The Monroe County Planning Commission held a duly advertised public hearing on _____, 2009 and made its recommendations to the Board of County Commissioners.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

PROPOSED TEXT CHANGES are presented in ~~striketrough~~ to indicate deletions and underline to indicate additions.

Section 1. Section 101-1 is amended as follows:

Accessory uses or accessory structures means a use or structure that is subordinate to and serves a principal use or structure; and

- a) is subordinate in area, extent and purpose to the principal use or structure served; and
- b) contributes to the comfort, convenience or necessity of occupants of the principal use or structure served; and
- c) is located on the same lot or on contiguous lots under the same ownership and in the same land use district as the principal use or structure.

Accessory uses include the utilization of yards for home gardens provided that the produce of the garden

1 is for noncommercial purpose. ; however, In no event shall an accessory use or structure be construed to
2 authorize a use or structure not otherwise permitted in the district in which the principal use is located,
3 and in no event shall an accessory use or structure be established prior to the principal use to which it is
4 accessory. Accessory uses shall not include guest units or any other potentially habitable structure.
5 Habitable structures are considered to be dwelling units as defined below in this section.
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7 ~~Adjacent landowner means an owner of land sharing a boundary with another parcel of land. For~~
8 ~~purposes of the plan, an intervening road, right of way, easement or canal shall not destroy the~~
9 ~~adjacency of the two (2) parcels.~~
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1 Adjacent lands means land sharing any portion of a boundary with another parcel of land. For purposes
2 of these regulations, lands shall be considered adjacent despite an intervening road (except US-1), right-
3 of-way, easement or canal, and shall be considered adjacent if they meet at one point.
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5 **Section 2.** Section 118-12 of the Monroe County Code is amended as follows:
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7 (m) *Docking Facilities:* Docking facilities shall be permitted, ~~provided that:~~ as follows:
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9 * * * * *

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1 ~~(4) Notwithstanding the provisions of section 9.5-4(A-2), docking facilities may be constructed on~~
2 ~~adjacent parcels under the same ownership and within the same zoning district, provided that a legally~~
3 ~~established principal use and/or structure exists on one (1) parcel. In the event that ownership of the~~
4 ~~adjacent parcel containing such an accessory dock is severed from the parcel containing the principal~~
5 ~~use/structure, the dock must be removed and the shoreline restored.~~
6

7 (4) Notwithstanding the definitions of “accessory uses and accessory structures” in section 101-1,
8 docking facilities may be permitted on adjacent parcels provided that:

9 (a) the lots/parcels are under identical common ownership in the same zoning district; and

0 (b) the principal structure is a lawfully established dwelling unit; and

1 (c) restrictive covenants are filed in the public record for both lots stating that the dock must be
2 removed and the shoreline restored if ownership changes or is severed so that each lot is owned by
3 separate owners.

4 (d) No overnight occupancy is permitted. No rental of the dock is allowed separate from the rental of
5 the associated dwelling unit.

6 (e) Water service may be provided by a single hose bib.

7 (f) Electric service may be permitted to the dock only.

8 (g) No such use shall be permitted in Tier I. If the proposed docking facility is on land designated
9 as Tier II, or III-A, the property must be scarified or disturbed. Clearing allowances shall be adhered to.

0 (h) In the event that ownership of the lands containing the dock is severed from the land containing
1 the principal use/structure, the dock must be removed and the shoreline restored.

(i) Applications for a docking facility under this section shall be consistent with the process, public notification requirement, and appeal process as a minor conditional use.

Section 3. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 4. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 5. Effective Date.

This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance pursuant to Chapter 380, Florida Statutes.

Section 6. Transmittal for Codification

The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2009.

Mayor George Neugent

Mayor Pro Sylvia J. Murphy

Commissioner Kim Wigington

Commissioner Heather Carruthers

Commissioner Mario Di Gennaro

ATTEST:
DANNY L. KOLHAGE, CLERK

MONROE COUNTY BOARD OF COUNTY
COMMISSIONERS

Deputy Clerk

Mayor George Neugent